

**ASSEMBLY BILL**

**No. 891**

**Introduced by Assembly Member Goldberg**

February 23, 2001

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An act to amend Sections 4059 and 4504 of, and to add Sections 3688.5 and 4504.1 to, the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 891, as introduced, Goldberg. Child support: disabled noncustodial parents.

(1) Existing law governs child support, and sets forth guidelines for determining the annual net disposable income of each parent for these purposes. Amounts attributable to certain items must be deducted from the annual gross income of each parent in determining the annual net disposable income. Existing law also provides that if a court has ordered a noncustodial parent to pay child support, payments for the support of the child made by the federal government pursuant to the Social Security Act or the Railroad Retirement Act because of the retirement or disability of the noncustodial parent and transmitted to the custodial parent or other child support obligee each month shall be credited toward the amount ordered by the court to be paid for that month by the noncustodial parent for support of the child, unless those payments were taken into consideration by the court in determining the amount of the support to be paid. Existing law requires local child support agencies to monitor child support cases and seek modifications when needed.

This bill would revise the above described provision relating to federal payments to include payments made by the Veterans' Administration and would require that all of those payments be taken

into consideration in determining the amount of support to be paid by the noncustodial parent. The bill would authorize the court to order a noncustodial parent who is eligible for those benefits to apply for them if the court determines that the child who is entitled to support payments from the noncustodial parent would be eligible for those benefits. The bill would also provide that the average amount of any recurring and significant expenses for the health-related costs of the noncustodial parent shall be excluded when determining that parent's net disposable income.

This bill would also require local child support agencies to notify a disabled noncustodial parent of the steps that he or she must take in order to modify a support order if he or she becomes disabled after a support order was entered. The bill would require those agencies to provide the parent with forms necessary to file a request for a hearing on modification of a support order. By imposing additional duties on local employees, the bill would create a state-mandated local program.

(2) Existing law establishes the State Supplementary Program for Aged, Blind, and Disabled which provides a monthly income based on need, as specified, to aged, blind, or disabled persons.

This bill would prohibit a court from making an order requiring a noncustodial parent who is retired or disabled or who meets other specified criteria to pay past or current support in an amount that would reduce the noncustodial parent's income below the amount the noncustodial parent is eligible to receive, or would have been eligible to receive, at the time the support obligation is or was incurred, under the State Supplementary Program for Aged, Blind, and Disabled.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Section 3688.5 is added to the Family Code, to read:

3688.5. (a) The local child support enforcement agency shall inform a disabled noncustodial parent orally and in writing by a dated and signed notice that in order for a support order to be reduced because of a decrease in the disabled noncustodial parent's income, that parent must file a motion to modify the support order. The local child support enforcement agency shall provide that notice only if all of the following conditions are met:

(1) The noncustodial parent becomes disabled and unable to work after the support order was entered.

(2) The noncustodial parent has applied for or is receiving Social Security, Railroad Retirement Act, or Veteran's Administration benefits or state disability benefits because of a disability.

(3) The noncustodial parent has informed that local child support enforcement agency that he or she is disabled and unable to pay the current support payments.

(b) If all of these conditions are met, the local child support enforcement agency shall do both of the following:

(1) Advise the disabled noncustodial parent orally and in writing, by providing a signed and dated notice, that the parent may obtain assistance from the court in filing all the necessary motion papers to be granted a hearing on the issue of modification if the parent's income has decreased significantly and he or she is unable to pay for legal help for assistance in obtaining the modification of the support order.

(2) Provide the parent with copies, by mail, of all forms the parent must file with a court in order to request a hearing on the issue of modification of a support order and an instruction sheet in plain English about how to complete and file the forms.

(c) If a disabled noncustodial parent is deemed unable to pay for legal assistance, if he or she would be eligible to proceed in forma pauperis, or if his or her income is less than \_\_\_\_ percent of the federal poverty level once the amount of the current support order and recurrent medical expenses are deducted from his or her disposable income, the court shall provide that parent with the

1 necessary assistance to complete all papers required to be filed  
2 with the court in order to obtain a modification hearing.

3 (d) If the notices, forms, and assistance described in  
4 subdivisions (a), (b), and (c) are not timely provided to the  
5 disabled noncustodial parent after the parent informs the local  
6 child support enforcement agency of his or her disability and  
7 inability to pay the current support amount, the order for any  
8 subsequent modification shall be effective as of the date the  
9 modification order would have gone into effect if the notice,  
10 forms, and assistance had been timely provided and the modified  
11 order shall supersede any court order in effect for support ordered  
12 after the effective date of the new order.

13 SEC. 2. Section 4059 of the Family Code is amended to read:  
14 4059. The annual net disposable income of each parent shall  
15 be computed by deducting from his or her annual gross income the  
16 actual amounts attributable to the following items or other items  
17 permitted under this article:

18 (a) The state and federal income tax liability resulting from the  
19 parties' taxable income. Federal and state income tax deductions  
20 shall bear an accurate relationship to the tax status of the parties  
21 (that is, single, married, married filing separately, or head of  
22 household) and number of dependents. State and federal income  
23 taxes shall be those actually payable (not necessarily current  
24 withholding) after considering appropriate filing status, all  
25 available exclusions, deductions, and credits. Unless the parties  
26 stipulate otherwise, the tax effects of spousal support shall not be  
27 considered in determining the net disposable income of the parties  
28 for determining child support, but shall be considered in  
29 determining spousal support consistent with Chapter 3  
30 (commencing with Section 4330) of Part 3.

31 (b) Deductions attributed to the employee's contribution or the  
32 self-employed worker's contribution pursuant to the Federal  
33 Insurance Contributions Act (FICA) (*26 U.S.C.A., Section 3101*  
34 *et seq.*), or an amount not to exceed that allowed under FICA for  
35 persons not subject to FICA, provided that the deducted amount  
36 is used to secure retirement or disability benefits for the parent.

37 (c) Deductions for mandatory union dues and retirement  
38 benefits, provided that they are required as a condition of  
39 employment.



1 (d) Deductions for health insurance or health plan premiums  
2 for the parent and for any children the parent has an obligation to  
3 support and deductions for state disability insurance premiums.

4 (e) Any child or spousal support actually being paid by the  
5 parent pursuant to a court order, to or for the benefit of any person  
6 who is not a subject of the order to be established by the court. In  
7 the absence of a court order, any child support actually being paid,  
8 not to exceed the amount established by the guideline, for natural  
9 or adopted children of the parent not residing in that parent's home,  
10 who are not the subject of the order to be established by the court,  
11 and of whom the parent has a duty of support. Unless the parent  
12 proves payment of the support, no deduction shall be allowed  
13 under this subdivision.

14 (f) Job-related expenses, if allowed by the court after  
15 consideration of whether the expenses are necessary, the benefit to  
16 the employee, and any other relevant facts.

17 (g) A deduction for hardship, as defined by Sections 4070 to  
18 4073, inclusive, and applicable published appellate court  
19 decisions. The amount of the hardship shall not be deducted from  
20 the amount of child support, but shall be deducted from the income  
21 of the party to whom it applies. In applying any hardship under  
22 paragraph (2) of subdivision (a) of Section 4071, the court shall  
23 seek to provide equity between competing child support orders.  
24 The Judicial Council shall develop a formula for calculating the  
25 maximum hardship deduction and shall submit it to the Legislature  
26 for its consideration on or before July 1, 1995.

27 (h) *The average amount of any recurring and significant*  
28 *expenses for the health-related costs of the noncustodial parent,*  
29 *which are to be paid by the noncustodial parent. Those recurrent*  
30 *expenses shall include, but shall not be limited to, medication,*  
31 *assistive devices, past or recurring medical bills, board and care*  
32 *costs, personal care services, items in a plan for achieving*  
33 *self-sufficiency, Medicare premiums and MediGap insurance*  
34 *premiums or any of the above or similar items paid for in*  
35 *installment payments.*

36 SEC. 3. Section 4504 of the Family Code is amended to read:

37 4504. (a) If the court has ordered a noncustodial parent to pay  
38 for the support of a child, payments for the support of the child  
39 made by the federal government pursuant to the Social Security  
40 Act or Railroad Retirement Act, or by the Veteran's

1 *Administration* because of the retirement or disability of the  
2 noncustodial parent and ~~transmitted to~~ *received by* the custodial  
3 parent or other child support obligee each month shall be credited  
4 toward the amount ordered by the court to be paid for that month  
5 by the noncustodial parent for support of the child ~~unless the~~  
6 ~~payments made by the federal government were taken into~~  
7 ~~consideration by the court in determining the amount of support~~  
8 ~~to be paid.~~ *The payments shall be taken into consideration by the*  
9 *court in determining the amount of support to be paid by the*  
10 *noncustodial parent who is the beneficiary of any of the benefits*  
11 *described in this subdivision. If a lump-sum payment which*  
12 *represents payments for more than one month is* ~~transmitted to~~  
13 *received by* the custodial parent or other child support obligee,  
14 credit shall be given for each month for which the lump-sum  
15 payment was made.

16 *(b) The custodial parent shall be required to apply for any*  
17 *Social Security, Railroad Retirement Act, or Veteran's*  
18 *Administration benefits the child may be entitled to receive. The*  
19 *noncustodial parent shall cooperate with the custodial parent in*  
20 *making that application.*

21 *(c) The court in deciding on the amount of support shall*  
22 *determine if the child who is entitled to the support payments is*  
23 *receiving federal payments pursuant to the programs listed in*  
24 *subdivision (a). If the child is not receiving payments under a*  
25 *program described in subdivision (a) and the court determines that*  
26 *there is a reasonable basis to believe the child would be eligible*  
27 *therefore, the court shall order the noncustodial parent to promptly*  
28 *apply for those benefits and upon qualification, credit shall be*  
29 *given for those benefits toward satisfying the obligation of the*  
30 *noncustodial parent pursuant to subdivision (a).*

31 *(d) If the custodial parent fails to apply for the Social Security,*  
32 *Railroad Retirement Act, or Veteran's Administration benefits to*  
33 *which the child is entitled by virtue of the custodial parent's*  
34 *retirement or disability, those benefits shall be deemed to have*  
35 *been received by the custodial parent for the child for the purposes*  
36 *of the credit required by subdivision (a), and the noncustodial*  
37 *parent's support obligation shall be reduced accordingly.*  
38 *However, the noncustodial parent shall have a continuing*  
39 *obligation to cooperate with the custodial parent in applying for*  
40 *those benefits, even after these payments have been deemed made*

1 *to the custodial parent for purposes of determining and satisfying*  
2 *the noncustodial parent's support obligation.*

3 SEC. 4. Section 4504.1 is added to the Family Code, to read:

4 4504.1. Notwithstanding any other provision in this division,  
5 a court shall not make an order requiring a noncustodial parent to  
6 pay past or current support in an amount that would reduce the  
7 noncustodial parent's income below the amount the noncustodial  
8 parent is eligible to receive, or would have been eligible to receive,  
9 at the time the support obligation is or was incurred, pursuant to  
10 Section 12200 of the Welfare and Institutions Code, subject to any  
11 adjustment to that amount applicable when the support obligation  
12 was incurred, pursuant to Chapter 3 (commencing with Section  
13 12000) of Part 3 of Division 9 of the Welfare and Institutions Code,  
14 under the following circumstances:

15 (a) The noncustodial parent is retired or disabled and receives  
16 income from any of the programs listed in subdivision (a) of  
17 Section 4504.

18 (b) The noncustodial parent is actually receiving income  
19 pursuant to Section 12200 of the Welfare and Institutions Code,  
20 regardless of whether the parent is receiving income from any  
21 other source.

22 (c) The noncustodial parent is eligible to receive benefits from  
23 any of the programs listed in subdivision (a) of Section 4504, and  
24 he or she would be eligible, but for those benefits, to receive  
25 income pursuant to Section 12200 of the Welfare and Institutions  
26 Code, subject to any adjustment to that amount that would be  
27 applicable pursuant to Chapter 3 (commencing with Section  
28 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

29 (d) The noncustodial parent is 65 years of age or older and  
30 receives retirement benefits, or the noncustodial parent is under  
31 the age of 65 years, he or she receives disability or retirement  
32 benefits, and he or she meets the social security disability  
33 standards. For purposes of this subdivision, noncustodial parents  
34 who qualify for benefits on the basis of disability or blindness  
35 under the Medi-Cal program (Chapter 7 (commencing with  
36 Section 14000) of Part 3 of Division (of the Welfare and  
37 Institutions Code), In-Home Supportive Services (Article 7  
38 (commencing with Section 12300) of Chapter 3 of Part 3 of  
39 Division 9 of the Welfare and Institutions Code), or the Cash  
40 Assistance Program for Aged, Blind, and Disabled Legal



1 Immigrants (Chapter 10.3 (commencing with Section 18937) of  
2 Part 6 of Division 9 of the Welfare and Institutions Code) shall be  
3 deemed to meet the social security disability standard for disability  
4 or blindness.

5 SEC. 5. Notwithstanding Section 17610 of the Government  
6 Code, if the Commission on State Mandates determines that this  
7 act contains costs mandated by the state, reimbursement to local  
8 agencies and school districts for those costs shall be made pursuant  
9 to Part 7 (commencing with Section 17500) of Division 4 of Title  
10 2 of the Government Code. If the statewide cost of the claim for  
11 reimbursement does not exceed one million dollars (\$1,000,000),  
12 reimbursement shall be made from the State Mandates Claims  
13 Fund.

